

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

No. 5:11-CR-00146-H

UNITED STATES OF AMERICA,

v.

WILLIE LAZZLO HENDERSON,

Defendant.

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ORDER

This matter is before the Court on Defendant's unopposed motion to set a new scheduling order [DE- 23], which the Court construes as a motion to extend the deadline for filing pretrial motions. The deadline for filing pretrial motions was July 1, 2011, and Defendant filed this motion on August 4, 2011. Accordingly, pursuant to Rule 45(b)(1)(B) of the Federal Rules of Criminal Procedure, Defendant must establish excusable neglect for failing to request an extension of time prior to expiration of the filing deadline. Courts consider the following factors in evaluating whether excusable neglect exists: "(1) the danger of prejudice to the non-moving party, (2) the length of delay in filing the motion and the impact on judicial proceedings, (3) the reason for the delay, including whether it was in the reasonable control of the moving party, and (4) whether the moving party acted in good faith." *United States v. Tiari El*, No. 3:03CR219-MU, 2008 WL 5255799, at *1 (W.D.N.C. Dec. 16, 2008)(citing *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd.*, 113 S.Ct. 1489, 1498 (1993)).

Defendant's arraignment and trial was initially scheduled for the August 9, 2011 term of Court. On July 18, 2011, after the deadline for filing pretrial motions had passed but prior to arraignment, Defendant's previous counsel withdrew from the case and the arraignment was continued to the Court's September 13, 2011 term. Thereafter, on July 21, 2011, Defendant's

present counsel entered an appearance in this case. Defendant seeks additional time to determine whether the filing of a pretrial motion is appropriate.

As to the first factor of prejudice to the non-moving party, the Government does not oppose the motion. As to the second factor of length of delay in filing the motion, Defendant filed the motion within a reasonable amount of time of his present counsel entering an appearance in this case. Additionally, this case is less than three months old. As to the third factor of the reason for the delay, the Court finds that, under these circumstances, it is legitimate. Defendant's previous counsel withdrew due to a conflict of interest, which was beyond Defendant's reasonable control. Finally, as to the fourth factor, the Court finds no evidence of bad faith.

After consideration of the applicable factors and based on the totality of the circumstances, the Court finds Defendant has shown excusable neglect for failing to request an extension of time prior to expiration of the filing deadline. Therefore, Defendant's motion [DE-23] is **GRANTED**, and any pretrial motions shall be filed no later than **August 26, 2011** and response shall be filed no later than **September 2, 2011**. The arraignment and trial of this matter remains scheduled for Judge Howard's **September 13, 2011** term of court in Greenville, North Carolina.

This the 8th day of August, 2011.


DAVID W. DANIEL
United States Magistrate Judge